IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 5TH FEBRUARY 2007 / 16TH MAGHA 1928

RFA.No. 30 of 2007()

I.A.NO.521/1991 IN OS.698/1985 of PRL.SUB COURT,THRISSUR

APPELLANTS: RESPONDENTS 3 TO 4: DEFENDANTS 5 & 6:

1. SATHEESAN, AGED 49 YEARS,
S/O.THARAKKAL CHAMI, KUNNAMKULANGARA DESOM,
CHIYYARAM VILLAGE, THRISSUR.

2. VIJAYAN, AGED 39 YEARS,
S/O.THARAKKAL CHAMI, KUNNAMKULANGARA DESOM,
CHIYYARAM VILLAGE, THRISSUR.

BY ADV. SRI.P.VIJAYA BHANU
SMT.K.S.CHANDRIKA

RESPONDENTS: PETITIONERS 2, 4 TO 8 & RESPONDENTS 5 TO 9:
PLAINTIFF AND LRS OF PLAINTIFFS 1 AND 3:

1. VALSA, W/O.ELATHURUTHY SUKUMARAN,
D/O.THARAKKAL GOVINDAN,
KANNANKULANGARA DESOM, CHIYYARAM VILLAGE,
THRISSUR TALUK.

2. THANKAMMA, W/O.LATE THARAKKAL VELAYUDHAN,
ALUVA VILLAGE, DESOM, ALUVA TALUK.

3. USHA, D/O.LATE VELYUDHAN,
ALUVA VILLAGE, DESOM, ALUVA TALUK.

4. VENU, S/O.LATE VELAYUDHAN,
ALUVA VILLAGE, DESOM, ALULVA TALUK.

5. SULEKHA, D/O.LATE VELAYUDHAN,
ALUVA VILLAGE, DESOM, ALUVA TALUK.

6. GEETHA, D/O.LATE VELAYUDHAN,
ALUVA VILLAGE, DESOM, ALUVA TALUK.

7. DEVAKY, W/O.LATE THANCHUKUTTY,
80/A 20, SUNDAR NAGAR, KALIAN, MUMBAI-98.

8. MANY, S/O.THANCHUKUTTY, 80/A 20, SUNDAR NAGAR,
KALIAN, MUMBAI-98.

9. UNNY, S/O.THANCHUKUTTY,
80/A 20, SUNDAR NAGAR, KALIAN, MUMBAI-98.

10. RAVI, S/O.THANCHUKUTTY, 80/A 20, SUNDAR NAGAR,
KALIAN, MUMBAI-98.

11. RADHA, D/O.THANCHUKUTTY, 80/A 20, SUNDAR NAGAR,
KALIAN, MUMBAI-98.

BY ADV. SRI.GOVIND K.BHARATHAN
SRI.PRABIN BABU

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 05/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

I.A.NO.222/2007 IN R.F.A.NO.30/2007

DISMISSED

SD/- KURIAN JOSEPH, JUDGE

5/2/2007 SD/- K.T.SANKARAN, JUDGE

//TRUE COPY//

ahz/

KURIAN JOSEPH & K.T. SANKARAN, JJ.

R.F.A. NO. 30 OF 2007

Dated this the 5th day of February, 2007

JUDGMENT

Sankaran, J.

Respondents 3 and 4 in the final decree proceedings are the appellants. They filed R.F.A.No.404 of 2004 before this Court earlier challenging the final decree passed then. After hearing the parties in detail, as per the judgment dated 8th March, 2006, R.F.A.No.404 of 2004 was allowed, the operative portion of which reads thus:

> "4. In the result the final judgment and decree passed by the Sub Court is modified and the matter is remitted to the trial court. The final decree court shall depute the same Advocate Commissioner to make the following changes in the allotment of plot.
>
> Plot-A in the Commissioner's plan less a small extent on the south eastern corner of plot-A having a measurement of 6 feet north south and 22 feet east west will be allotted to the share of the plaintiffs 1 and 2. The Commissioner shall make adjustments in plot-D and plot-C to compensate the loss sustained by the plaintiffs 1 and 2 from plot-A and take the same space from plot-C which is allotted to the second defendant. The Commissioner

> shall also try to draw the line on the western side of plot-A slightly towards west so that plot-D will get equal extent on the southern side separating plot-B and plot-C."

2. After the judgment in R.F.A.NO.404 of 2004, the Commissioner measured the property again and submitted report and plan. The appellants raised objections, but they did not examine the Commissioner. The court below rejected the contentions raised by the appellants and passed the final decree as directed by this Court in R.F.A.No.404 of 2004. The appellants contend in the appeal that in view of the new measurement, it is not possible to install a workshop on the northern side of the house since the area which is available there is less. The directions given in R.F.A.No.404 of 2004 were with specific measurements to be taken in carving out a plot on the south eastern side of plot-A. It was after considering all the contentions raised by the parties, such a direction was given. So long as the directions issued earlier stand unaltered, the appellants are not entitled to raise new contentions and raise objections, which they have now

raised, against the Commissioner's report. The court below was justified in rejecting the contentions raised by the appellants. No grounds are made out for interference in the appeal.

The Regular First Appeal is accordingly dismissed.

(KURIAN JOSEPH)
Judge

(K.T.SANKARAN)
Judge

ahz/

KURIAN JOSEPH&
K.T.SANKARAN, JJ.

R.F.A.NO. 30 OF 2007

JUDGMENT

5th February, 2007